Neutral Citation Number: [2022] EWHC 732 (Admin)

Case No: CO/3715/2021

IN THE HIGH COURT OF JUSTICE
QUEEN'S BENCH DIVISION
ADMINISTRATIVE COURT
SITTING IN MANCHESTER

1 Bridge Street West,
Manchester, M60 9DJ
Hearing: Tuesday 29th March 2022
Handed down: Thursday 31 March 2022

Before :

MR JUSTICE FORDHAM

- -

Between :

DR SHEELA JOGULA RAMASWAMY	**Claimant**
- and -	
GENERAL MEDICAL COUNCIL	**Defendant**

- -
- -

The **Claimant** in person
Ivan Hare QC (instructed by GMC) for the **Defendant**

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Hearing date: 29/3/22

- -

Approved Judgment

I direct that no official shorthand note shall be taken of this Judgment and that copies of this version as handed down may be treated as authentic.

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THE HON. MR JUSTICE FORDHAM

MR JUSTICE FORDHAM:

Introduction

1. I announced the order that I was making in this case at the hearing (29 March 2022), with reasons to follow in writing, as they now do. This is a CPR Part 8 claim in the Administrative Court issued on 12 October 2021. The claim seeks revocation or variation, pursuant to section 41A(10)(b) of the Medical Act 1983, of an order for interim conditional registration. The interim order was imposed on 14 September 2021 and reviewed at a recent hearing on 9 March 2022. A substantive hearing in the Medical Practitioners Tribunal is currently scheduled for 11 April 2022. The interim order, if it continues, is due to expire on 12 March 2023. The points I have decided are entirely procedural and case-management points. It is unnecessary and inappropriate to say anything more about the context, circumstances and contested positions of the parties. Those are all matters for consideration on a subsequent occasion.

Mode of hearing

2. Immediately prior to the hearing this morning I made an Order for a hybrid hearing, the terms of which Order were provided to the Claimant and to which I drew her attention. That was in circumstances where the Claimant had contacted the court by email this morning asking for a link to access her case by video. The case had been listed as an in-person hearing. I decided in the circumstances that it was necessary and appropriate to make an order so that she return the hearing, in circumstances which she told me arose from a misunderstanding on her part given that previous hearings have been remote hearings. The court staff were able with commendable speed to set up the necessary arrangements. The link worked well. I did not need in the circumstances to embark on any further enquiry, and I do not need to arrive at any view as to how the situation arose. I am satisfied that the problem was dealt with in a way that was necessary, appropriate and proportionate. The Defendant was represented by solicitor and counsel in the court room. The case had been listed on the cause list as an in-person hearing and the court rooms open to the public. For the future, assumptions about remote hearings should not be made.

The parties' positions

3. The Claimant asked me to adjourn the hearing. She reiterated reasons set out in an email dated 11 March 2022, which she amplified orally. The basis for the adjournment is that the Claimant wishes to retain the services of the barrister who has represented her throughout all stages of the proceedings against her brought by the GMC, and at all stages of proceedings before this Court which have arisen out of those underlying proceedings. The barrister is not currently available, for reasons beyond their control, the cogency of which reasons the Defendant accepts, as do I. By an email on 14 March 2022 the Defendant had responded to the Claimant's request. It took the position, subject to the Court, that it would not oppose a postponement or adjournment. That remains its position. That was subject to one important point, raised at the hearing before me. The Defendant understandably raises a point about the appropriate costs order, if there is to be an adjournment.

4. The order which the Defendant invited me to make was that, if the Court were to adjourn this case, that should be on the basis that the Claimant should pay the entirety

of the Defendant's costs in relation to 3 matters: (i) first, the preparation of the court bundles; (ii) secondly, the preparation of the skeleton argument; and (iii) thirdly the attendance by solicitor and counsel in court. A costs schedule served on 24 March 2022, which followed on from the Defendant's skeleton argument filed on 23 March 2022, put the Court in a sufficiently informed position as to the quantum of the costs for me to be able to consider those three elements individually as well as cumulatively.

5. The Claimant for her part urged me not to make any costs order against her. I put this to her: if the Court were to reach the conclusion that the only proper basis on which this case could be adjourned was with a costs order against her, would she still want to have this case adjourned or would she in those circumstances prefer to have the court deal with the matter today? Her clear position was that she urged the Court to adjourn, whether or not a costs order was made, but that she strongly submitted that there should be no order as to costs.

Adjournment

6. I am satisfied that it is appropriate – subject to two other linked matters to which I will come – to adjourn this case. The Defendant, in my judgment rightly, in its email on 14 March 2022 and in its position today, does not submit that the case should proceed with the Claimant representing herself, in circumstances where she wishes to have her (direct access) Counsel continue and where he is unavailable. I am also satisfied that this case should be adjourned on the basis that it will be heard by me, if I am available. That will promote the efficient dispatch of the case when it comes to be dealt with on its substantive merits. The Court has spent time in pre-reading. The overriding objective in my judgment clearly will be promoted by the case continuing before me. It is not possible to say when the Claimant's Counsel will be available, but the Court can liaise with the parties to find an appropriate date. So far as the public interest considerations are concerned, the adjudicative decision makers in the regulatory proceedings have identified an interim order which, for their part, they have assessed as necessary and proportionate to protect the public and the public interest. That order will continue. The adjournment which the Claimant is seeking, including its open-ended and uncertain duration, leaves the 'status quo' intact so far as any interim order is concerned. So far as concerns the substantive proceedings which are in train against the Claimant, the way in which those matters are dealt with will be a matter for consideration by those who are seized with those proceedings. This adjournment defers this Court's consideration of the Claimant's application for revocation or variation of the interim order in place against her, until such time as she is able to enlist her Counsel once more, and until a suitable date to that Counsel, the Defendant and the Court can be found.

Fee

7. The first linked matter is the question of payment of an application fee. The application fee for a N244 application is £275. The Claimant must pay that fee within 14 days of the Court's order, in default of which the Claim will stand dismissed. This is in my judgment plainly appropriate in light of the circumstances to which I will come. The need for an N244 application is, however, dispensed with pursuant to CPR 23.3(2)(b).

Costs

8. The second linked matter is the question of costs. I am quite satisfied that it is appropriate to adjourn the case only on the basis of making a suitable costs order, and that the suitable costs order is this. The Claimant shall pay the Defendant's costs of preparing the bundles for the hearing, and the costs of and incidental to the hearing, which costs are summarily assessed at £2,500, to be paid within 35 days of the Court's order. I will explain why.

9. The hearing on 29 March 2022 was fixed by the Court and communicated to the Claimant by a listing letter dated 2 March 2022. That letter said:

> ***you will not be granted an adjournment save in exceptional circumstances. Should you wish to seek an adjournment, you must make a formal application using Form PF244 – Administrative Court Office.***

The Claimant's request for a postponement on 11 March 2022, to which I have referred, was made by email. Although it was addressed to the Administrative Court in Manchester where the case had been transferred from London the Claimant sent the email to the general office email address in London. It was properly forwarded to the Manchester ACO by the Defendant. On 17 March 2022 the Administrative Court Office in Manchester wrote a short and clear email to the Claimant which said:

> ***Any request to adjourn proceedings must be made in the form of an on notice application to the court (using Form N244)…***
>
> ***Please ensure any application notice and fee is made to the court (Manchester ACO) as promptly as possible due to the proximity of the hearing on the 29th March.***

10. The Claimant accepts that she did not communicate further with the Court or the Defendant in the period after 17 March 2022. She did not make any application. She did not contact the Court about any difficulty in terms of making any application. She did not contact the Defendant about any difficulty.

11. The position was reinforced in several ways. The Defendant, in an email later on 17 March 2022 to the Court and to the Claimant, provided current availability dates for any reason listing:

> ***… in the event that the Claimant does make a formal application to postpone, and such application is granted.***

Then, by a skeleton argument dated 23 March 2022 the Defendant explained that it had proceeded to prepare bundles for the assistance of the Court, and to provide its skeleton argument, in circumstances where the Claimant had been told by the ACO in Manchester

> ***that she should make a proper application for postponement (and pay the relevant fee)***

The skeleton argument explained:

> ***at the date of this document, the GMC has not been served with any such application and has therefore prepared for the hearing by producing the Core and Supplementary Bundles and instructing Counsel to attend the hearing and draft this Skeleton.***

The core bundle provided to the court by the Defendants contain some 188 pages, including core legal materials and some key authorities. The supplementary bundle

relevant to 1967 pages. This case has a considerable back story as can be seen from the previous judgment of this Court [2021] EWHC 1619 (Admin) (Morris J, 15 June 2021). The 8-page skeleton argument identified the defendant's position resisting to the claim for revocation or variation of the interim order, referencing the key materials on which the Defendant was relying.

12. The matter proceeded. The hearing remained fixed for one day in Court. The hearing was published on the Court's cause list the day before the hearing, as the listing letter of 2 March 2022 had explained it would be. A courtesy email was sent by the Court on 28 March 2022 at 15:28 which simply stated that as no formal request had been made to adjourn it, the hearing remained listed for the following day.

13. Then, by an email on Monday 28 March 2022 at 17:49 – the evening before the hearing – the Claimant wrote to the Court copied to the Defendant. She said she apologised for any inconvenience caused. She said she had not had a chance to speak to her barrister about the formal request to whose absence the court email have referred. She said that the barrister had advised her to write to the Court and that she had followed his advice. She said that, because he had not been available, she had not had chance to speak to him about the "formal adjournment" to which the Court had referred. She also said that she had looked to the court website, had found different N244 forms, was not sure which one to fill in, and relied on her barrister who normally deals with such matters. She emphasises that she is a layperson without any legal knowledge. She offered to make the application when her barrister "is back at work". She also stated that she would still be happy to pay the fee for the adjournment.

14. The Claimant reiterated these points in her submissions to me. She said she had gone online but did not have a chance to discuss the position with her barrister. She referred to communications which she had had, at an earlier stage, and with a different Court (in October/ November 2021). She referred to an earlier email which she said had referred to two options: one of which was making an application; and the other of which was filing a consent order. She had tried her best to contact her barrister. She had "Googled" for "Form N244" and had looked online but that there were different forms including one for the Commercial Court. She stated that she thought matters could be dealt with by agreement. She also told the Court that she had thought that the formalities could be dealt with at the end of the hearing. She emphasised that she had not acted in deliberate default, apologised again for any inconvenience, and reiterated that she is a layperson.

15. In my judgment, the key points are these. First, the court's email of 17 March 2022 was very clear as to what was needed. Secondly, the step that was needed was the same one that had been referred to in the Court's listing letter: an application, in Form N244. Thirdly, the step of "Googling" for "Form N244" leads to the form on the website, at the gov.uk website where there is a page about making an application on Form N244. That website provides the Form N244 itself. On the website, the Form is accompanied by a "Notes for Guidance" document which gives guidance as to completing the form. Fourthly the Claimant knew that she was dealing with the Administrative Court, and she had been communicating with the Administrative Court. Fifthly, at no stage did the Claimant raise with the Court her wish to pursue the adjournment, her attempt to pay the fee, her attempt to locate and provide the appropriate form, or any difficulty in relation to any of this. Sixthly, at no stage did the Claimant raise any of these matters with the Defendant. Seventhly, the Court has been provided with no reason – still less any good reason – why the Claimant did not follow up in any of these ways, using any

of these channels of communication which were open to her. The Court naturally makes every allowance for the fact that the Claimant is acting in person and without access to her barrister. But she was told, clearly, what she needed to do. And she knew that she had not done it. Eighthly, she took no step in relation to the Court or in relation to the Defendant notwithstanding her receipt of the Defendant's skeleton argument and the points which it made about the absence of the required application. Ninthly, it is very clear in this case what would have happened had the Claimant taken steps to provide a Form N244 and pay the requisite fee. The Defendant would have maintained that it did not oppose the adjournment. The case would have been adjourned. Tenthly, the costs which were incurred by the Defendant in circumstances where the Claimant failed to take obvious and reasonable steps that were open to her, and the costs were incurred by reason of that failure.

16. It is no answer that the Claimant did not have access to her barrister in order to discuss with him what the Court was saying. The Court was making clear, to her, what step was needed by her, in order to secure the adjournment. It was doing so in a situation which arose out of the unavailability of the barrister. If there was some difficulty or confusion on the part of the Claimant, she had every opportunity to raise this. She chose not to communicate further with the Court, and she chose not to communicate further with the Defendant. The Claimant is not assisted by her reference to two 'options', said to have been described in a previous communication. She had a clear communication from the relevant court seized of the matter which told her the action that she needed to take. She did not revert to that Court, referring to any alternative. She did not pursue any alternative. She did not refer to two alternative options when giving her email explanation and apology on 28 March 2022, the evening before the hearing. There, she was referring to Form N244 and her having been "not sure which one to fill in". The reference to a form in the commercial court again clearly does not assist her. She knew this was a case in the Administrative Court. And, again, she could have asked for help had there been any doubt or confusion. The idea of the Court dealing with orders at the end of proceedings, which she explained that she has encountered in previous proceedings, also does not assist her. What she was asking the Court to do was to adjourn this hearing. She was told she needed to take a particular step. She was also told that she needed to take it promptly. She knew and could foresee the implications for the Defendant, so far as incurring costs were concerned, were that they would be preparing for the hearing. That is exactly what happened. And the position was emphasised by them, including in the skeleton argument that they subsequently provided. The Claimant was, rightly, requesting an adjournment well ahead of the hearing. She was, rightly, told how she needed to proceed.

Which costs?

17. Mr Hare QC for the Defendant submits that the Defendant should have the entirety of its costs in relation to all three of the elements to which I earlier referred. So far as the skeleton argument is concerned, he emphasises this point. It is possible that this case will not return to this Court, depending on what happens in relation to the underlying substantive proceedings. Were the case that, for whatever reason, the interim order 'fell away' the position would be that the legal merits of the Claimant's claim for revocation or variation of the interim order, and the legal merits of the Defendant's resistance to that claim, would never come to be dealt with by this Court. In those circumstances, there would be no need for a skeleton argument by the Defendant and no need to incur

the costs of providing one. Had the case been properly adjourned, as it should have been, the costs of the skeleton argument would not be incurred. For those reasons, the Claimant should have to pay those costs. I was not persuaded by that argument. In my judgment, the correct and fair course so far as concerns the skeleton argument is to order that those costs be "reserved". It is true that one scenario that is possible in this case is the one identified by Mr Hare QC. Another possible scenario is that the arguments in this case are contested and decided by this Court. If that happens, the Defendant will be relying on the arguments which set out in its skeleton argument. If the Claimant succeeds, those arguments will have failed. They will have failed, having been set out in a document which, on this scenario, would have needed to have been written and filed in any event. In those circumstances, I cannot see that it would be just for the Defendant to recover its costs about skeleton argument. But by "reserving" the costs it will be possible to revisit the costs of the skeleton argument, depending on what happens next in this case.

18. So far as the other two elements are concerned, in my judgment, the Defendant's position as to costs following from the Court's adjournment is irresistible. If the Claimant had taken the basic steps which were available to her, the case would have been adjourned, until such time as her barrister was available. Once the barrister was again available, the preparation of the bundles would have been carried out by him on her behalf as the Claimant. The Defendant would not have needed to be 'stepping in', to provide bundles to assist the Court. The costs incurred by the Defendant in conjunction with the preparation of bundles have been set out and verified in the costs schedule. They constitute £522 in costs, incurred by reference to work done by the solicitor in the case. It is in my judgment plainly appropriate Claimant should have to pay that element of the costs. The attendance at the hearing by the solicitor and Counsel acting for the Defendant is also an element of the costs for which it is plain that the Claimant should have to pay, in circumstances where the case is being adjourned. They were entirely foreseeable and entirely avoidable. I am able to assess – by way of a reduction from the time that would have been spent by the solicitor attending a full day's hearing – the more modest sum of £391.50 as the solicitor costs of attending at the short hearing which has ensued, given the adjournment. I can take an appropriate 'broad-brush' approach to the composite fee of £6,460 for Counsel, which fee embodies the time spent on the skeleton argument, the preparation for and the attendance at the hearing. I was satisfied that £2,500 constitutes a reasonable and proportionate assessment of the costs which the Claimant should pay in relation to the preparation of the bundles, and in relation to the costs immediately incidental to and for attendance at the hearing, which hearing costs have been 'thrown away' by the Claimant's actions in not following through on the step which was identified to her by the Court, and by not raising with the Court or with the Defendant any doubt or difficulty which she says she was encountering as to the implementation of that step. Mr Hare QC asked that the costs should be payable within 14 days that I was satisfied that a just and proportionate time-frame to pay the costs is 35 days.

Time estimate

19. Finally, the Claimants urged me to extend the time estimate from the one day which was fixed to a hearing of two or three days. I am satisfied that the one-day fixture remains appropriate. This is an application to revoke or vary an interim order. Although the court has an original jurisdiction needs to examine the evidence with care, armed

with skeleton arguments on both sides and targeted to pre-reading it should be possible to deal with the arguments within a single day, but if the Claimant's counsel when he becomes available considers – in light of his professional judgment and informed by his professional duties to the Court – that such a time estimate is inadequate, that can be communicated to the Court and further consideration given to that aspect of the case.